

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)

Table of Allotments,

FM Broadcast Stations

(Enfield, New Hampshire; Hartford and White River  
Junction, Vermont; and Keeseville and Morrisonville,  
New York)

MB Docket No. 05-162  
RM-11227

**RECEIVED**

To: Office of the Secretary

Attn: Assistant Chief, Audio Division, Media Bureau

NOV - 3 2005

Federal Communications Commission  
Office of Secretary

**REPLY COMMENTS**

Radio Broadcasting Services, Inc. ("RBS"), by its attorneys and pursuant to Section 1.405 of the Commission's Rules, hereby submits these Reply Comments in response to the Public Notice, Report No. 2731, issued on October 19, 2005,<sup>1</sup> of the Counterproposal of Hall Communications, Inc. ("Hall") to allot Channel 282C to Morrisonville, New York (the "Counterproposal"). Hall submitted its Counterproposal in response to the Notice of Proposed Rulemaking setting forth the Petition filed by Nassau Broadcasting III, L.L.C. ("Nassau"), the licensee of Stations WWOD(FM), Channel 282C3, Hartford, Vermont ("WWOD") and WXLFFM), Channel 237A, White River Junction, Vermont ("WXLFF"), to amend the FM Table of Allotments as follows: (1) to reallocate Channel 282C3 from Hartford, Vermont to Keeseville, New York and to modify the license of WWOD accordingly; (2) to reallocate Channel 237A from White River Junction, Vermont to Hartford, Vermont and to modify the license of WXLFF

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<sup>1</sup> Reply Comments to the Counterproposal must be submitted no later than 15 days after the date of the Public Notice. These Reply Comments are therefore timely filed.

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accordingly; (3) to reallocate vacant Channel 231A from Keeseville, New York to Morrisonville, New York; and (4) to allocate Channel 282A to Enfield, New Hampshire. *See Enfield, New Hampshire; Hartford and White River Junction, Vermont; and Keeseville and Morrisonville, New York*, 20 FCC Rcd 7587 (MB 2005) ("NPRM").

As argued by RBS in its Comments to the NPRM, Nassau's Petition is an unlawful attempt to achieve, by alternate means, the very same Channel 282C3 Keeseville allotment unsuccessfully sought by Nassau's predecessors-in-interest. *See Keeseville, New York, Hartford and White River Junction, Vermont*, 19 FCC Rcd 16106 (MB 2004) ("*Keeseville I*").<sup>2</sup> Hall's Counterproposal is clearly superior to Nassau's Petition – not only is the Counterproposal lawful, it also better serves the public interest. Accordingly, the Media Bureau should deny Nassau's Petition and grant Hall's Counterproposal. In support thereof, RBS states as follows.

In *Keeseville I*, the petitioners sought to change the allotments of WWOD, Channel 282C3 from Hartford, Vermont to Keeseville, New York and WXLN, Channel 237A from White River Junction to Hartford, Vermont. *See id.* at 16106.<sup>3</sup> The Commission rejected the proposal, correctly choosing instead to accept a Counterproposal, submitted by Hall, for a new drop-in channel to Keeseville. As noted by the Commission, Hall's Counterproposal better served the public interest because it promised to bring a first local service to Keeseville without disrupting existing service at either Hartford or White River Junction, Vermont. *See id.* at 16110.

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<sup>2</sup> No party sought reconsideration or review of this proceeding.

<sup>3</sup> At the time *Keeseville I* was before the Commission, Nassau had already entered into an agreement with the licensees of WWOD and WXLN to purchase the Stations. Pursuant to Section 2.1(b) of the Asset Purchase Agreement among the parties, dated March 9, 2004, Three Million dollars (\$3,000,000) was to be added to the purchase price in the event that Commission granted the requested WWOD, Channel 282C3 allotment change to Keeseville.

*Keeseville I* establishes, as a matter of Commission precedent, the public interest value of the Channel 231A Keeseville allotment and the "balance of existing services" at Hartford and White River Junction. *Keeseville I* also stands as a record of Hall's expression of interest in the Channel 231A Keeseville allotment, a fact Nassau is keen to deny. Under Commission policy, any party seeking the deletion of an allotment in which there is already an expression of interest must establish that extraordinary circumstances warrant such a deletion. *See Montrose and Scranton, Pennsylvania*, 5 FCC Rcd 6305 (1995); *Billings and Lewistown, Montana*, 11 FCC Rcd 8560 (1996). No such extraordinary circumstances have been presented here by Nassau. Accordingly, Nassau's Petition is unlawful and should be denied.

In any event, in addition to the fundamental point that, unlike the Nassau Petition, Hall's Counterproposal actually constitutes a valid proposal, the Counterproposal better promotes the public interest. By allotting Channel 282C3 to Morrisonville, New York while preserving the existing allotments at Hartford and White River Junction, Vermont and the Channel 231A allotment at Keeseville, New York, Hall's Counterproposal produces greater net gains than Nassau's Petition without any losses. As demonstrated by Hall in its Comments to the NPRM, while Nassau's proposal would result in service gains for 172,451 people and losses for over 44,817, Hall's Counterproposal will result in gains for 183,465 persons with no countervailing losses, for a net gain over Nassau's proposal of 55,831 persons. *See Hall Comments at 9 and Engineering Exhibit, p. 3.*

Hall's Counterproposal is clearly superior to Nassau's Petition in light of this net gain and, significantly, the preservation of service to Hartford and White River Junction, Vermont. Under Nassau's Petition, Hartford and White River Junction would suffer the same elimination of

service the Commission took exception to in *Keeseville I* – the loss of aural service to over 44,000 listeners, as Hartford would see its Class C3 service downgraded to Class A service, and White River Junction would lose its only full-time local FM service.<sup>4</sup> Nassau's attempt to compensate for this loss of service by proposing first aural local transmission services at Enfield, New Hampshire and Morrisonville, New York is unavailing. The provision of first aural local transmission service to Morrisonville, population 1,702, and Enfield, population 1,698,<sup>5</sup> cannot trump the value of preserving existing service to Hartford and White River Junction, the public interest benefit of which was of central importance in *Keeseville I*. The preservation of existing service to Hartford and White River Junction and the provision of a first aural local transmission service to Morrisonville, as proposed by Hall, better serves the public interest. In sum, Nassau's Petition is unlawful and should be denied; Hall's Counterproposal better promotes the public interest and should be granted.

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<sup>4</sup> Besides WXLN, the only Station licensed to White River Junction is Station WNHV(AM), a Class D daytime-only Station.

<sup>5</sup> In its Petition, Nassau cites the township figure for Enfield, 4,618 persons. *See* Petition at 7. The more appropriate population is the Census Designated Place population, 1,698 persons. *See US Census Bureau - American FactFinder*, Enfield CDP, [www.factfinder.census.gov](http://www.factfinder.census.gov) (last visited May 31, 2005).

WHEREFORE, Radio Broadcasting Services, Inc. respectfully requests that the Commission deny the Petition for Rule Making submitted by Nassau Broadcasting III, L.L.C. and grant the Counterproposal submitted by Hall Communications, Inc.

Respectfully submitted,

**RADIO BROADCASTING SERVICES, INC.**

By: 

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November 3, 2005

## CERTIFICATE OF SERVICE


I, Barry A. Friedman, do hereby certify that I have, on this 3rd day of November, 2005, served a copy of the foregoing "Comments" on the following parties, by first-class mail, postage prepaid:

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